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November 24, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: June 13, 2008
Case Number: TSO-0638

This Decision concerns the eligibility of XXX XXXXX (hereinafter referred to as "the Individual") for an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local Department of Energy Security Office (LSO) suspended the Individual's clearance after determining that it could not resolve certain derogatory information regarding the Individual's mental health. For the reasons stated below, I find that the Individual's access authorization should be restored.

I. BACKGROUND

The present proceeding involves an Individual who has experienced one Brief Psychotic Episode.² On October 26, 2007, the Individual's spouse awakened early in the morning, around

¹ An "access authorization" is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² The American Psychiatric Association's Diagnostic and Statistical Manual (Fourth Edition Text Revision), provides the following Diagnostic criteria for Brief Psychotic Disorder:

A. Presence of one (or more) of the following symptoms:

- (1) delusions
- (2) hallucinations
- (3) disorganized speech (e.g., frequent derailment or incoherence)
- (4) grossly disorganized or catatonic behavior

B. Duration of an episode of the disturbance is at least 1 day but less than 1 month, with eventual full return to premorbid level of functioning.

C. The disturbance is not better accounted for by a Mood Disorder With Psychotic Features, Schizoaffective Disorder, or Schizophrenia and is not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication) or a general medical condition.

2:00 a.m., to find the Individual collecting “valuables” which were actually everyday items. Transcript of Hearing (Tr.) at 165-66. On her spouse’s suggestion, the Individual went to bed. The Individual, however, became confused and irrational and started crying inconsolably. *Id.* at 167-68. The Individual’s spouse called the police, who arranged for the Individual to be transported to a local emergency room for psychiatric evaluation and treatment. *Id.* The Individual was evaluated for several hours, prescribed medication to calm her and was then released. *Id.*

After the Individual reported this episode to the LSO, her access authorization was suspended pending evaluation by a psychiatrist (the DOE Psychiatrist) retained by the LSO. The DOE Psychiatrist conducted an extensive review of the Individual’s medical and personnel security records. The DOE Psychiatrist also conducted a forensic psychiatric examination of the Individual on March 19, 2008. After conducting his review of these records and his examination of the Individual, the DOE Psychiatrist issued a letter in which he stated his conclusion that the Individual has an illness or mental condition, Brief Psychotic Episode, which is of a nature which causes, or may cause, a significant defect in judgment or reliability. DOE Exhibit 6 at 7-8. In this letter, the DOE Psychiatrist further opined that the Individual was:

On the right track in terms of trying to resolve the issues that lead to a brief psychotic episode that befell her in the fall of 2007. However, she has not yet started on a course of psychotherapy. She has had only a few monthly sessions with an EAP counselor in addition to her successful medication treatment from a psychiatrist. Her psychotherapy will begin on March 22, 2008. While her psychotic symptoms are currently in full remission, her emotional fragility persists, and the stresses in her life that initially caused the psychotic episode have not yet been resolved.

It may be that over the next six to twelve months that the Individual will establish a more complete resolution of her difficulties to the point that one would be able to determine that she does not have a condition that causes, or may cause, a defect in judgment or reliability. But presently it is too soon to draw that conclusion, as it is possible that this individual’s life circumstances will conspire again to create another psychotic episode.

My expectation is that this Individual will do well in the foreseeable future as she confronts the issues that she needs to deal with emotionally.

DOE Exhibit 6 at 9-10.

The LSO therefore proceeded to determine that the Individual’s disorder raises a security concern

under 10 C.F.R. § 710.8(h).³ As a result, on January 24, 2007, the DOE issued a letter notifying the Individual that the DOE possessed derogatory information that created a substantial doubt concerning her eligibility for access authorization (the Notification Letter). In response to the Notification Letter, the Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called one witness: the DOE Psychiatrist. The Individual called seven witnesses: her spouse, her psychiatrist (Treating Psychiatrist), her psychotherapist, her former Employee Assistance Program (EAP) Psychologist, a close friend, a co-worker and her supervisor. The Individual also testified on her own behalf. I closed the record of this proceeding on October 10, 2008, when I received a copy of the transcript of the hearing. The LSO submitted 13 exhibits and the Individual submitted 3 exhibits.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides

[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.

10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the concern; the circumstances surrounding the concern, including knowledgeable participation; the frequency and recency of the concern; the Individual's age and maturity at the time of the concern; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the concern, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, the record shows that a valid and significant

³ Section 8(h) provides that a security concern is raised when an individual has: “An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h).

question has been raised about the Individual's continued eligibility for an access authorization. However, the Individual has convinced me that restoring her security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the present case, it is undisputed that the Individual has suffered one Brief Psychotic Episode. Moreover, it is also undisputed that during this Brief Psychotic Episode, the Individual's judgment and reliability were significantly impaired. Accordingly, the LSO properly invoked Criterion H in the instant case.

At the hearing, four mental health professionals, two psychiatrists and two psychologists testified. Each of these four mental health professionals, two of whom currently provide the LSO with consulting services and are well versed with the DOE's Personnel Security and Human Reliability programs, testified that, at the time of the hearing, the Individual was not experiencing any symptoms of her mental illness and that the Individual's judgment and reliability were unimpaired. Each of these four mental health professionals testified that the possibility exists that the Individual could experience another Brief Psychotic Episode in the future, but characterized that possibility as low and/or unlikely. Moreover, the mental health professionals opined that they are confident that any recurrence of a Brief Psychotic Episode could be detected and treated before any compromise of the national security were to occur.

The Individual's former EAP Psychologist (the EAP Psychologist) testified on the Individual's behalf at the hearing. Until very recently, the EAP Psychologist was employed at the DOE facility at which the Individual is employed. Tr. at 10. The EAP Psychologist formerly provided counseling services in the DOE facility's EAP program and continues to provide psychological evaluation services to the facility's Human Reliability Program (HRP). *Id.* at 10-11.

The EAP Psychologist's professional association with the Individual began when she evaluated the Individual's fitness to return to work after the Individual's psychotic episode. The EAP Psychologist testified that, even though she was aware that the Individual was being treated by a psychologist and psychiatrist, she encouraged the Individual to return to the EAP for further evaluation and assistance in making the transition back into the workplace.⁴ *Id.* at 13. The Individual joined a weekly depression support group facilitated by the EAP Psychologist. *Id.* at 13-14. The Individual also began monthly counseling sessions with the EAP Psychologist. *Id.* The EAP Psychologist worked with the Individual to address the issues that were causing her stress. *Id.* The EAP Psychologist noted that the Individual's thought processes are "quite coherent and logical." *Id.* at 15. The Individual worked with the EAP Psychologist to develop adaptive coping strategies and urged her to engage in more social activities. *Id.* at 16-17. The Individual was very engaged in her counseling and in her support group and made significant

⁴ While the Individual's diagnosis is Brief Psychotic Disorder, it was her inability to manage her mild to moderate depression that precipitated her psychotic episode. There is no evidence in the record indicating that her mild to moderate depression, in and of itself, constitutes an illness or mental condition of a nature which causes or may cause, a significant defect in judgment or reliability.

progress. *Id.* at 17-20. The EAP Psychologist noted that the Individual's progress was "quite remarkable . . . her motivation, her desire for compliance, her commitment to her job is as high as it gets . . . her overall reduction of symptoms and her ability to turn some of the thoughts into behaviors was quite remarkable." *Id.* at 20. The Individual put into practice the EAP Psychologist's suggestions that she increase her social support system, improve communication with her family members and work with her sister in order to provide for her elderly father's care. *Id.* The EAP Psychologist further testified that she doesn't "see that there is any concern about her [clearance]." *Id.* at 22, 28. The EAP Psychologist testified that the probability that the Individual will have another psychotic episode is "quite low." *Id.* at 22-23, 45. The EAP Psychologist described the Individual's prognosis as "very good." *Id.* at 39.

The Individual's treating psychiatrist (the Treating Psychiatrist) testified on her behalf at the hearing. The Treating Psychiatrist testified that he first met with the Individual four days after her brief psychotic episode. *Tr.* at 51. The Treating Psychiatrist testified that the Individual had been transported from her home by ambulance to a hospital because she had begun to exhibit disorganized and delusional behavior. *Id.* At the hospital, she was evaluated and prescribed medication (Haldol) to treat her symptoms. After six or eight hours, the hospital's medical staff determined that she was not in need of hospitalization and she was released. *Id.* at 51-52. This psychotic episode was her first. *Id.* at 53.

The Treating Psychiatrist testified that his "initial diagnosis was that she had gone through a psychotic episode, and I felt that, most probably, there was an underlying depression that was involved in the episode as well." *Id.* The Treating Psychiatrist noted that by the time he first saw the Individual she wasn't "manifesting any acute disorganized behavior, [and] her speech patterns were pretty organized." *Id.* at 53-54. The Treating Psychiatrist prescribed an antipsychotic medication for the Individual, *Olanzapine*, which was "very effective." *Id.* at 54. The Treating Psychiatrist also prescribed *Zoloft*, an anti-depressant, to the Individual. *Id.* at 55-56. He originally saw the Individual on a weekly basis, but now sees her twice a month. *Id.* at 54. At the time of her Brief Psychotic Episode, the Individual was undergoing "major life stresses" and "major life changes" according to the Treating Psychiatrist. *Id.* at 56-57.

The Treating Psychiatrist described the Individual's prognosis as "very good." *Id.* at 58. The Treating Psychiatrist testified that the Individual is now in full remission. *Id.* at 70, 78. He noted that the Individual is scrupulously compliant with her medication regime and has made "good strides" in her ability to cope and deal with stressors. *Id.* at 58, 62. The Individual now proactively addresses her feelings and concerns. *Id.* at 62. The Individual's social support network is improving and she is communicating with her spouse much more effectively. *Id.* at 74-75. Most important, the Treating Psychiatrist testified that the Individual's probability of relapse is low if she continues to receive therapy and take her medication. *Id.* at 60. The Treating Psychiatrist opined that the actual risk that the Individual will relapse is "very low at this point." *Id.* at 63. If the Individual were to have a relapse, it would most likely be of brief duration. *Id.* at 60. The Treating Psychiatrist testified that a relapse would be unlikely, because preliminary symptoms would be detectable and treatable for a period of time before they progressed into psychosis. As the Treating Psychiatrist testified, the Individual "would not just

wake up one morning and be psychotic.” *Id.* 60-61, 66. The Treating Psychiatrist testified that even if the Individual were to experience another brief psychotic episode, the likelihood that the national security would be affected is low because she would get immediate treatment and would not likely act out in a harmful manner. *Id.* at 83-84.

The Individual’s treating psychotherapist (the Psychotherapist), a licensed psychologist and a marriage and family therapist, testified on her behalf at the hearing. The Psychotherapist testified that he had been meeting with the Individual on a weekly basis since March 22, 2008. Tr. at 88. The Psychotherapist testified that the Individual’s psychotherapy was having positive results. *Id.* at 91-92. He testified that the Individual has grown in her ability to deal with stress and her relationships. *Id.* at 93-94, 97-98. The Individual is “much more capable of dealing with those stressors now, she’s more confident, self-assured, she’s more decisive.” *Id.* at 100. The Individual is “much more engaged with other people.” *Id.* at 103. The Psychotherapist testified that it is unlikely that the Individual would suffer another psychotic breakdown as long as she continued her therapy. *Id.* at 98.

The DOE Psychiatrist was in the hearing room for the entire hearing. He observed the testimony of each of the Individual’s witnesses, which also included the Individual and her supervisor, close friend and husband. He then testified on behalf of the DOE. He testified that by the time he had examined the Individual in March 2008, she was already in “complete remission.” Tr. at 229. The DOE Psychiatrist explained that a Brief Psychotic Episode is the least serious illness in the spectrum of psychotic illnesses. *Id.* at 229. A Brief Psychotic Episode is self-limited, by definition it self-resolves within a month. *Id.*

The DOE Psychiatrist testified that, as a result of the testimony he heard at the hearing and the passage of time, he now has a much more extensive basis for prognosticating the Individual’s future likelihood of suffering a future Brief Psychotic Episode. *Id.* at 230- 231. The DOE Psychiatrist testified that “the more compliant a patient with treatment, the more that the medication and psychotherapy is accepted and dealt with as the treatment, the less likely you are to see a blossoming, if you will, of an illness from this.” *Id.* at 232. He noted that the Individual is “doing all the right things in terms of protecting herself from a recurrence from another episode.” *Id.* He further noted that “a better prognosis exists with the more rapid onset of symptoms, and that . . . the onset of her symptoms were very, very rapid, which is in her favor.” *Id.* at 232-33. The DOE Psychiatrist testified that the Individual has “made substantial psychological progress and growth in therapy and that she seems psychologically much healthier.” *Id.* at 234. The DOE Psychiatrist testified that the Individual has developed more open communication with her husband, her emotional tone is brighter and better modulated, her emotional control is improved, she has accepted and become comfortable with one of her major life stressors, and she has developed a proactive plan to deal with another of her major life stressors. *Id.* at 234-235. He noted that she is currently receiving excellent care from her current mental health providers. *Id.* at 237. The DOE Psychiatrist testified that if the Individual continues with her current therapy regime, “her future and her prognosis are fairly bright.” *Id.* at 237. The DOE Psychiatrist testified that he could not “offer anyone any absolute assurance that another episode may not occur in the future,” but with the support system that is in place and

monitored status at work and continued treatment, that if there were to be “another episode, it would unlikely lead to the kind of problem that would cause us concern about her security, because . . . she would be identified early on as becoming disturbed again . . . proper steps would probably be taken in a timely enough fashion for the national security to be protected.” *Id.* at 239-240, 243. The DOE Psychiatrist testified that, if he were now to submit a report to the LSO, he “would probably submit today a favorable report on her behalf.” *Id.* at 240. The DOE Psychiatrist testified that there is a “low incidence of likelihood of this recurring . . . I’d be surprised if a year from now I heard she was sick again, but I wouldn’t be shocked, because I know it could happen again.” *Id.* at 242.

Guideline I of the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines), lists conditions that can mitigate security concerns raised by psychological conditions. In the present case, the Individual has satisfied each of these conditions.

Specifically, the Individual has met the conditions set forth at ¶ 29(a) of Guideline I. As discussed above, the record clearly shows that the Individual’s condition has responded to treatment and that the Individual has demonstrated ongoing and consistent compliance with the treatment plan.

The Individual has met the conditions set forth at ¶ 29(b) of Guideline I. As discussed above, the record clearly shows that the Individual has entered into a comprehensive treatment program and her illness has responded dramatically to this intervention. All four of the mental health professionals that testified at the hearing indicated that the Individual’s prognosis is favorable.

The Individual has met the conditions set forth at ¶ 29(c) of Guideline I. As discussed above, the record clearly shows that two duly qualified mental health professionals employed by a U.S. Government contractor for the purpose of accessing eligibility to maintain DOE security clearances have testified that the Individual condition is under control and in remission, and has a low probability of recurrence.

The Individual has met the conditions set forth at ¶ 29(d) of Guideline I. As discussed above, the record clearly shows, that the Individual’s Brief Psychotic Episode was of a temporary nature and that the Individual has resolved the underlying stressors which led to episode. All four mental health professionals have testified that there are no longer indications of emotional instability on the part of the Individual.

Finally, The Individual has met the conditions set forth at ¶ 29(e) of Guideline I. As discussed above, the record clearly shows that there is no current problem with the Individual’s psychological condition.

Since the record shows that all five of Guideline I’s conditions for mitigation have been met and all four of the mental health professionals testified convincingly on the Individual’s behalf, I am

convinced that she has sufficiently mitigated the security concerns raised by her having experienced a Brief Psychotic Episode.

IV. CONCLUSION

In essence, my decision is a risk assessment. On the whole, the testimony in this case clearly shows that there is a low risk that the Individual will experience a future episode of her disorder. A possibility exists that if such a relapse were to occur, the Individual would experience a substantial defect in judgment or reliability. However, that risk is clearly mitigated by the evidence presented in this proceeding showing that the Individual is receiving excellent and effective preventive care and that the Individual has an excellent family, social and medical support system that would likely detect and treat any future episode before it results in a significant defect in judgment or reliability.

Accordingly, I conclude that the Individual has presented compelling evidence that warrants restoring her access authorization. Since the Individual has resolved the DOE's allegations under Criteria H, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and national security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. The LSO may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: November 24, 2008